

## REMARKS

Claims 1 – 20 are pending in the Application.

Claims 1-2, 6-8, 12-14, 18-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tsuji et. al., U.S. Patent No. 6,090,089, ("Tsuji") in view of Murakami et. al., U.S. Patent No. 5,268,213, ("Murakami") and Sorenson, U.S. Patent No. 4,327,730, ("Sorenson.") Applicant respectfully traverses the rejection.

The Examiner's responses to Applicant's previous arguments are well considered. However, Applicant respectfully disagrees with some of the assertions therein regarding the art. Before turning to those assertions however, Applicant notes certain differences between the claims at issue and the art that, Applicant submits, make the present claims patentable over the art.

Claim 1 and claim 13, the independent claims in the case, both have as elements a vacuum formed film with apertures. None of the references appear to teach a vacuum formed film with apertures as a top sheet. Tsuji teaches a nonwoven fabric and may teach a film, but not a vacuum formed film (see, e.g., Col. 3, lines 46-49.) Rather, Tsuji teaches embossing rolls for providing shape to the top sheet (see, e.g., Col. 4, line 1, et seq.) Murakami teaches a thermoplastic top sheet that apparently is made by thermoforming a thermoplastic sheet. (Col. 3, lines 10-12.) Sorenson teaches a thermoplastic sheet that may be textured using vacuum (Col. 5, lines 34-40.)

Applicant respectfully submits that the proposed combination of these different teachings cannot bar the present claims. There is nothing in any of the references that teaches providing a vacuum formed film as a top sheet. The only mention of any vacuum

at all appears to be in Sorenson, which has a ribbon vacuum embossed, but not vacuum formed and not with apertures.

If the Examiner's combination was done, the result would be first, embossing a top sheet through rolls (Tsuji,) then thermoforming the sheet (Murakami,) and then texturing the sheet using vacuum (Sorenson.) With all due respect, that combination simply would not work and would most likely destroy at least Tsuji and Murakami. That is, the embossing of Tsuji would be likely destroyed by the heating according to Murakami. The attempt then to reheat and texture according to Sorenson would probably destroy Murakami, as the reheated sheet would lose the holes – they would melt and run into each other. Moreover, the vacuum proposed in Sorenson would add additional force to the sheet, further destroying the structural integrity of any holes left from Murakami.

No one, reading one or more of these references, would be motivated to construct the combination suggested by the Examiner, and in fact, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. The Section 103 rejection is based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims, *Ex parte Levingood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to

combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure, *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991.) In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

In summary, the Examiner's conclusion at page 3 of the Office Action that "[t]he combination of the references has a structure that is the same or similar to what is taught in the instant specification..." is incorrect. The references do not teach the structure.

Accordingly, Applicant respectfully requests that withdrawal of the rejection to independent claims 1 and 13, as well as the withdrawal of the rejection to their dependant claims, 2, 6-8, 12, 14, 18-19, and early allowance of all claims.

As Applicant noted above, the Examiner's responses to Applicant's previous arguments are well considered. However, Applicant respectfully disagrees with some of those responses regarding the art.

The Office Action begins with a recitation of the teachings of Tsuji. The Examiner notes that Tsuji teaches "the elevation of lands in the *transverse* direction of the sheet..." (Office Action, dated November 3, 2005, at page 2, emphasis added.) Thus it cannot be fairly said that Tsuji teaches the elevation of lands in the stroking direction nor that Tsuji teaches any stroking direction. The Examiner then goes on, later in the Office Action, when considering Applicant's argument that Tsuji is destroyed by the proposed combination, to effectively state that Tsuji is neutral on the direction of the ribs, and although not stating affirmatively that the ribs may be any direction other than transverse, still has enough scope to possibly include other directions. Applicant respectfully disagrees. At Col. 3, lines 49-58, Tsuji affirmatively explains why the ridges

are desirable in the transverse direction – because “the napkin is readily curved longitudinally” due to the ribs, and the transverse ribs prevent longitudinal creases from forming. Accordingly, Applicant submits, Tsuji does teach ribs in a transverse direction, and any proposed combination of both Tsuji and Murakami could either have ribs in both directions or neither direction (each direction canceling out the other.) That proposed combination would destroy either reference. Nor could it be used to claim the instant claims are obvious.

(Note that later in the Office Action, at page 5, the Examiner dismisses Applicant’s prior arguments by asserting that Murakami teaches grooves that “conduct fluid to all parts of the top sheet...” With all due respect, Murakami does not teach grooves that conduct fluid to all parts of the top sheet. Instead, at the cited language (Col. 3, lines 20 –30) Murakami teaches that “the body fluid once discharged onto the topsheet 1 rapidly flows along the respective grooves 10 and *spreads to the longitudinally opposite ends thereof*.” Col. 3, lines 25-28, emphasis added.)

Finally, Sorenson does not add anything to the combination. As already noted, it has no apertures, holes or slots. The Examiner’s note in the Office Action that Sorenson is cited to show only a height feature really is an example of picking and choosing features from a references. With all due respect, the Examiner cannot disregard the other features of Sorenson simply to adopt its height parameters – especially when there is apparently no mention of any elements – even lands – in Sorenson. The proposed combination is, with all due respect, impermissible hindsight reconstruction.

Claims 3-5, 9-11, 15-17 and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Tsuji in view of Murakami et al. and Sorensen as applied to claims 1-2, 6-8, 12-14, 18-19 and further in view of Faelten U.S. 2,304,632 ("Faelten").

Applicant respectfully traverses the rejection.

The remarks above with regard to Tsuji, Murakami and Sorensen are also applicable here. In addition Faelten which has no apertures, holes or slots, would result in an even more difficult, unworkable combination, as its wrinkles would be interposed with the nubbles of Sorensen, on top of the ribs, which may be in either or no direction as taught by the proposed combination of Tsuji and Murakami.

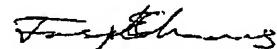
Accordingly, the proposed combination therefore would destroy each reference.

The Examiner has responded by stating that Applicant is wrong. But the Examiner offers no conclusion on the merits – he merely states that he disagrees with Applicant's position. With all due respect, the Examiner must show something in any of the references—and especially Faelten – that teaches the desirability of the proposed combination – or even teaches its workability. Otherwise, the rejection cannot be sustained. As there is nothing shown, Applicant respectfully requests that the rejections of claims 3-5, 9-11, 15-17 and 20 be withdrawn and the claims be allowed to proceed to issue.

## CONCLUSION

Therefore, for the reasons given above, Applicant submits the application is now in condition for allowance and Applicant respectfully requests early issuance of the Notice of Allowance.

Respectfully submitted,



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